

**BOARD OF DIRECTORS**

*Dorothy P. Harris, Chairperson  
Conchita S.N. Taitano, Vice Chairperson  
Fe Valencia-Ovalles, Board Secretary*



**Resolution No. 2024-10**

**RELATIVE TO AUTHORIZING THE PORT AUTHORITY GENERAL MANAGER TO SEEK CLARIFICATION FROM THE SUPERIOR COURT OF GUAM OF THE CIVIL SERVICE COMMISSION'S DECISION AND JUDGMENT IN CSC CASE NO. 23-AA11T, SPECIFIC TO THE LEGAL EFFECT OF INSUFFICIENT VOTES.**

**BE IT RESOLVED BY BOARD OF DIRECTORS OF THE JOSE D. LEON GUERRERO COMMERCIAL PORT:**

**WHEREAS**, on October 30, 2023, Former Port Procurement & Supply Manager JoyJean R. Arceo was terminated for (1) refusal to perform prescribed duties [violation of Port Personnel Rule 11.303(B)]; (2) insubordination [violation of Port Personnel Rule 11.303(E)]; and (3) unsatisfactory performance by failing to put forth honest effort in her performance of duties, and by using a public office for private gain [violation of Port Personnel Rules 11.303(R), 3.000(E), and 3.000(G)]; and

**WHEREAS**, on November 20, 2023, Arceo filed an appeal of her adverse action with the Civil Service Commission ("CSC"), as CSC Adverse Action Appeal Case No. 23-AA11T, that resulted in the CSC presiding over the argument of five (5) preliminary motions and a merits hearing disputed over the course of five (5) days, including the presentation and cross-examination of evidence in the form of sixty-three (63) documentary exhibits, nine (9) testifying witnesses, as well as opening and closing arguments; and

**WHEREAS**, at the conclusion of the merits hearing on June 12, 2024, the then-four (4) sitting members of the CSC voted such that two (2) members voted to sustain and uphold the Port's termination of Arceo, and two (2) members voted to revoke the Port's termination of Arceo and, thusly, the CSC declared that Port Management failed to attain "the Rule of Four [votes]," causing the CSC to order Arceo's reinstatement to her former Port position, and award her full back pay, benefits, and attorney's fees, despite Port counsel's objection that the CSC lacked four (4) votes to support their act to reinstate Arceo; and

**WHEREAS**, on June 19, 2024, Port staff attorney filed, for the CSC's signature, a proposed written order stating that the CSC lacks legal authority to revoke the Port's adverse action because it did not render four (4) affirmative votes to do so, which is required by 4 GCA § 4402 for any action by the CSC; and

**WHEREAS**, despite the above, on August 6, 2024, the CSC convened and purported to sign a Decision and Judgment that decreed: that the Port's termination of Arceo is revoked; that Arceo is ordered reinstated to her former position; that the Port is to award Arceo all applicable back pay and benefits; and that the Port is to award Arceo her attorney's fees. Port counsel asked to address the CSC on the matter and was denied and instructed to file a motion for reconsideration instead. To date, the Port has not been served a copy of the CSC's purported written Decision and Judgment; and

**WHEREAS**, on August 9, 2024, Port staff attorney filed a written reconsideration motion to the CSC to revoke and rescind its August 6, 2024 Decision and Judgment, citing case law and statutes for the proposition that the CSC lacks legal authority to take any official act to affect the Port's adverse action because it did not render four (4) affirmative votes to revoke it, as is required of the CSC by 4 GCA § 4402; and

**WHEREAS**, on August 27, 2024, the CSC ruled on the Port's motion for reconsideration, denied it, and persisted in its promulgation of its August 6, 2024 Decision and Judgment ordering Arceo's reinstatement and award of back pay and attorney's fees. At that hearing, two (2) of the CSC members commented that, while 4 GCA § 4402 does appear to clearly mandate that at least four (4) affirmative votes are required for the CSC to take *any* action (to include Arceo's reinstatement), the CSC has always operated such that any failure of Management to obtain four (4) votes in favor of upholding its adverse action results in an automatic reversal of Management's adverse action by the CSC, even if the Employee fails to obtain four (4) member votes in favor of said reversal. The two (2) CSC members noted that it appears necessary that the Port appeal the issue to the Guam Superior Court, given the CSC's habitual practice and self-imposed dilemma; and

**WHEREAS**, 4 GCA § 4406(e) states that, at the conclusion of a merits hearing, the CSC "may sustain, modify, or revoke the action taken" by Management. Further, the Legislature explicitly limits the legal authority of the CSC, such that 4 GCA § 4402 unequivocally directs that: "The affirmative vote of four (4) members shall be required for any action of the [Civil Service] Commission."; and

**WHEREAS**, it is incumbent upon the Port to file a Writ of Judicial Review in the Superior Court of Guam to challenge the CSC's August 6, 2024 Decision and Judgment, for the reason that the CSC illegally exceeded its statutory authority and violated its enabling Act by issuing a Decision and Judgment revoking the Port's adverse action imposed on former employee JoyJean R. Arceo without the support of four (4) affirmative CSC member votes to do so; and

**WHEREAS**, the Port believes it perennially essential that it to strive to uphold the rule of law, and to endeavor to protect the integrity of all personnel actions that it proclaims for the benefit of the Port and its employees generally. Taking this matter to the Superior Court for its review is, not only tacitly urged by members of the CSC itself at the August 27, 2024 hearing, but crucially necessary here because the plain language of the law so obviously sides with the Port; and



**NOW THEREFORE BE IT RESOLVED**, that the Board of Directors hereby authorizes General Manager Rory J. Respicio to direct the Port Staff Attorney(s) to file, advance, and argue a Writ of Judicial Review (or any other applicable or related legal vehicle) before the Superior Court of Guam to seek to overturn the Decision and Judgment purportedly signed by the Civil Service Commission on August 6, 2024 in CSC Adverse Action Appeal Case No. 23-AA11T. The latitude and authority granted to this end includes any and all legal means and methods deemed advisable by the Port Staff Attorney(s) in the best interest of the Port in this matter, with the oversight and approval of the General Manager as to all major decisions to be made on the Port's behalf in the matter that would not otherwise be necessary to bring to this Board to decide; and

**BE IT FURTHER RESOLVED**, that the Chairperson certify to, and the Secretary attest to, the adoption hereof.

**PASSED AND ADOPTED UNANIMOUSLY BY THE BOARD OF  
DIRECTORS THIS 30<sup>th</sup> DAY OF AUGUST, 2024.**

A handwritten signature in black ink, appearing to read "D. Harris", is written above a horizontal line.

**DOROTHY P. HARRIS  
CHAIRPERSON, BOARD OF DIRECTORS  
PORT AUTHORITY OF GUAM**

A handwritten signature in black ink, appearing to read "Fe Valencia-Ovalles", is written above a horizontal line.

**FE VALENCIA-OVALLES  
BOARD SECRETARY, BOARD OF DIRECTORS  
PORT AUTHORITY OF GUAM**